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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of )  
 )  
MUR 6397 ) DISMISSAL AND CASE  
CHRIS GIBSON FOR CONGRESS ) CLOSURE UNDER THE  
ELIZABETH A. FITZPATRICK, ) ENFORCEMENT PRIORITY  
AS TREASURER ) SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases. The Office of General Counsel has scored MUR 6397 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office.

In this matter, the complainant, Kate A. Kaufman, asserts that respondents Chris Gibson<sup>1</sup> for Congress and Elizabeth A. Fitzpatrick, in her official capacity as treasurer ("the

<sup>1</sup> Mr. Gibson represents New York's 20<sup>th</sup> Congressional District.

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1 Committee"),<sup>2</sup> violated the Act by failing to include appropriate disclaimers on some of the  
2 Committee's billboards, campaign literature, and signs during the 2010 election cycle.  
3 Complainant provided a sample photocopy of each of the Gibson communications at issue.  
4 The billboard includes a photograph of Gibson, several campaign slogans, and the statement  
5 "We Need Chris Gibson. Proven Leadership You Can Count On." The billboard also  
6 includes a reference to the Committee's website. The one-page campaign literature, entitled  
7 "About Chris Gibson," discusses Gibson's personal background and includes a reference to  
8 the Committee's website and e-mail address. The campaign literature also includes the phrase  
9 "Gibson for Congress" in large bold letters at the bottom of the page. Finally, a somewhat  
10 large sign, entitled "Gibson Campaign Office," was located close to the street in front of what  
11 appears to be a suburban office park.

12 In its response, the Committee acknowledges its failure to include disclaimers on the  
13 billboard and on the campaign literature, which, it states, was "handed out from the campaign  
14 office during the campaign." However, the Committee points out that both communications  
15 included information identifying them as Gibson campaign material. The Committee also  
16 claims that it corrected the communications.<sup>3</sup> As for the sign, the Committee questions  
17 whether it required a disclaimer, as the sign merely "indicate[d] the presence of the campaign  
18 office located at Clifton Park, New York," but the Committee nonetheless claims that it  
19 removed the sign and would not display it again until a disclaimer was added.

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<sup>2</sup> The Committee notified the Commission of a change in treasurer on April 15, 2011, after the complaint and response were filed.

<sup>3</sup> We have not received copies of the corrected communications that the Committee claims it enclosed with its response. In December 2010, the Committee agreed to re-mail the complete response with the corrected communications. Despite numerous telephone calls, we have not received the complete package from the Committee.

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1           The Act and the Commission's regulations require that all public communications of a  
2 candidate or an authorized committee contain a disclaimer stating that the authorized  
3 committee paid for the communication. 2 U.S.C. § 441d(a)(1); 11 C.F.R. §§ 110.11(a) and  
4 (b)(1). A public communication includes outdoor advertising facilities, such as billboards.  
5 See 11 C.F.R. § 100.26. Thus, it appears that the Gibson billboard should have contained a  
6 complete disclaimer and, therefore, was not in compliance with 2 U.S.C. § 441d(a)(1) and 11  
7 C.F.R. §§ 110.11(a) and (b)(1). Although lacking the requisite disclaimer, the billboard  
8 appears to have contained sufficient identifying information so that the public was unlikely to  
9 have been misled as to whether it was associated with the Gibson campaign. In addition, the  
10 Committee appears to have taken remedial action by erecting a new billboard with the  
11 appropriate disclaimer.

12           A "public communication" also encompasses "any other form of general public  
13 political advertising." See 2 U.S.C. § 431(22); and 11 C.F.R. § 100.26. The campaign  
14 literature at issue might constitute "general public political advertising," which would require  
15 a disclaimer pursuant to 2 U.S.C. § 441d(a)(1) and 11 C.F.R. §§ 110.11(a) and (b)(1). See  
16 11 C.F.R. § 110.11(c)(2)(i) ("a disclaimer in 12-point type satisfies the size requirement ...  
17 when it is used for ... flyers ... or other printed material ..."). However, because the  
18 Committee handed out the literature from its campaign office, and the literature contained the  
19 Committee's website and the candidate's e-mail address, it is unlikely that the general public  
20 could have been misled as to who created the communication. Moreover, the Committee  
21 took what it terms as "necessary corrective action" by adding a disclaimer to its subsequent  
22 handouts.

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1           As for the "Gibson Campaign Office" sign, it does not appear to be a form of public  
2 communication that requires a disclaimer. The sign, located in front of the office park that  
3 housed the Gibson's campaign office, is merely informative, as its placement appears to  
4 simply identify the location of the office. Accordingly, this Office believes the sign does not  
5 violate the provisions of 2 U.S.C. § 441d(a)(1) or 11 C.F.R. § 110.11.

6           In conclusion, the Committee has acknowledged, and has promptly rectified, the  
7 alleged disclaimer deficiencies. Accordingly, under EPS, the Office of General Counsel has  
8 scored MUR 6397 as a low-rated matter and therefore, in furtherance of the Commission's  
9 priorities as discussed above, the Office of General Counsel believes that the Commission  
10 should exercise its prosecutorial discretion and dismiss the allegations that the Gibson  
11 billboard and campaign literature lacked the requisite disclaimer. *See Heckler v. Chaney*, 470  
12 U.S. 821 (1985). Additionally, this Office recommends that the Commission find no reason  
13 to believe that the "Gibson Campaign Office" sign violated 2 U.S.C. § 441d(a)(1) or  
14 11 C.F.R. § 110.11.

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**RECOMMENDATIONS**


1. Dismiss the allegations that Chris Gibson for Congress and Elizabeth A. Fitzpatrick, in her official capacity as treasurer, violated 2 U.S.C. § 441d(a)(1) or 11 C.F.R. § 110.11 regarding the Gibson billboard and campaign literature.
2. Find no reason to believe that Chris Gibson for Congress and Elizabeth A. Fitzpatrick, in her official capacity as treasurer, violated 2 U.S.C. § 441d(a)(1) or 11 C.F.R. § 110.11 regarding the "Gibson Campaign Office" sign.
3. Close the file and send the appropriate letters.


Anthony Herman  
General Counsel

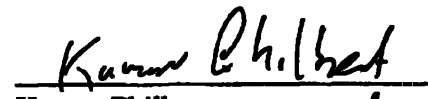
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10/25/11

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